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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,089	09/17/2003	Hiroynki Sekiguchi	03886/0200058-US0	3720
7278	7590	02/25/2008		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER MANCHO, RONNIE M	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 02/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/664,089

**Applicant(s)**

SEKIGUCHI, HIROYUKI

**Examiner**

RONNIE MANCHO

**Art Unit**

3663

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CIS-100)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 12/28/07.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant argues that newly submitted claims 29-33 reads on elected species A because independent claim 29 represent a rewritten version of claim 23, wherein claim 23 reads on elected species A (see response dated 11/19/07). Applicant's argument is acknowledged and entered. Thus claims 29-33 will be examined as corresponding to elected species A.

Claims 29-33 are pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 29-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 29, the following limitation is not enabled: "a judging counter expressing the possibility of evacuation of the preceding vehicle". What is evacuation of a vehicle? The applicant copies the limitation from the specification and pastes it in the claims. Where is the vehicle evacuating from? Evacuation is a term used in vacuum technology wherein air is evacuated from a container. There is not art related. The limitation does not enable one skilled in the art to ascertain if the vehicle is flying off i.e. the wheels of the vehicle are completely off

the road surface, or the vehicle is deviating from a lane or the vehicle has been driven off a road into the woods such as in accident, etc.

In addition, the following limitation appears to be a machine translation, thus not enabling one skilled in the art to ascertain the invention: “the judging counter set in response to a lengthwise distance (Z) of the preceding vehicle from the own vehicle a widthwise distance (CAL) of the preceding vehicle has been recognized”. Applicant fails to properly use punctuation thus creating run-on sentences and confusing the claim limitation. The limitations thus do not enable one skilled art to ascertain the invention. If applicant is claiming that the judging counter is set in response to a lengthwise distance and a widthwise distance then the limitation would be new matter. However, a new matter rejection cannot be made at this time since applicant has not clearly set forth the limitations in the invention.

Applicant further recites “increasing the judging counter”. The limitation is not enabled because a judgment counter is a apparatus or object. Is applicant reciting increasing the time of a timer or the physical size of a judgment counter or the color or the calculation speed, etc? The rejection applies to the limitation, “the increased judging counter is larger than...”. Applicant does not clearly enable the limitation in the disclosure, thus once skilled in the art will not ascertain the limitation.

Next the limitation, “eighth means for judging that the preceding vehicle is NOT traveling in front of the travel path of the own vehicle in a case where the increased judging counter is larger than the threshold value and outputting a signal”. The limitation is not enabled. In step S308 of fig. 4 (see applicant’s disclosure, page 16, lines 2-12; page 17, lines 14 to page 18, line 3) a timer is presumably increased indicating how long a vehicle in a path in front of a

preceding vehicle. Then step S310 indicates that a vehicle has been in a path in front of a preceding vehicle in a time greater than 100 i.e. the time is larger than a threshold value of 100. Step S311 indicates that a preceding vehicle is NOT in a path in front of the own vehicle. Thus step S311 is contrary to steps S304, S305, S308, S309, S310. The above recited limitation is thus not enabled.

Further, claim 31 recites "a vehicle evacuation region". Applicant's disclosure does not explain the meaning of an "evacuation region" as claimed particularly in relation to the term "evacuation". The limitation is confused when claimed with the limitation, "plurality of distance divisions" because applicant indicates that vehicles are located in a plurality of distance divisions in front of an own vehicle. Applicant indicates that an "evacuation region" is established at "a plurality of distance divisions", thus confusing and not enabling one skilled in the art to ascertain the invention.

The rest of the claims are rejected for depending on a rejected base claim.

4. Claims 31 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 31, the following limitation constitutes new matter because the original disclosure does not have support for the limitation:

"a vehicle evacuation region". Claim 32 is rejected for depending on claim 31.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 31, 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 31, it is not clear what all is meant and encompassed by the limitation, "a vehicle evacuation region". Presumably this implies a region where there is no vehicle.. Applicant indicates that an "evacuation region" is established at "a plurality of distance divisions". However, the claimed distance divisions establish regions where vehicles are located. An evacuation region is thus not distinct from the claimed "plurality of distance divisions".

Claim 32 is rejected for depending on claim 31.

MPEP 2173. Claims Must Particularly Point Out and Distinctly Claim the Invention. The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 112, first paragraph with respect to the claimed invention.

### ***Response to Arguments***

7. Applicant's arguments filed 8/1/07 have been fully considered but they are not persuasive.

The applicant has cancelled claims 11-14 and 20-24. Thus all arguments thereto are moot.

Applicants arguments regarding Saneyoshi et al (6122597) is moot because the rejection has been withdrawn in view of replete 112 first and second rejections. Applicant is advised to correct the 112 issues in the claims.

*MPEP 2114 [R-1] Apparatus and Article Claims — Functional Language*

For a discussion of case law which provides guidance in interpreting the functional portion of means-plus-function limitations see MPEP § 2181 - § 2186.

It is believed that the rejections are proper and stand.

***Conclusion***

8. This is a final. All of claims 29-33 are drawn to the same invention of claims 11-14, 20-24 in the rejection dated 5/2/07 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Communication*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571-272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho  
Examiner  
Art Unit 3663

4/19/07



Art Unit: 3663

/Jack W. Keith/

Supervisory Patent Examiner, Art Unit 3663